

**Contract Improvement Process
Fiscal Rules and Policies
As of November 27, 2006**

From Fiscal Rule 2-2 to Policies:

Situations where No PO is Required

Contracts shall be used as commitment vouchers when purchasing or leasing goods and services as required by fiscal rule 3-1. If a contract is not required, a purchase order shall be used as a commitment voucher to support disbursement of funds for goods or services costing more than \$5,000 except that purchase orders need not be written for the following disbursements:

- Payroll related disbursements (withholding, authorized benefits, etc.).
- Disbursements for financial aid or tuition assistance programs.
- Disbursements for usual water, gas, electric, and customary local and long-distance telephone service including pagers and cell phones.
- Disbursements for dues, membership fees, subscriptions, and conference registration fees.
- Disbursements for postal and other delivery charges including messenger fees.
- Disbursements for routine internal services provided by a state agency or institution of higher education (e.g., printing services and materials ordered from the Division of Central Services, Capitol Complex lease payments, or legal services provided to state agencies and institutions of higher education by the Department of Law.).
- Disbursements for intra-agency or intra-institution purchases.
- Payments from a state program to individuals qualified for those program benefits.
- Payments calculated by a state agency or institution of higher education for obligations to be paid as required by a program within that state agency or institution of higher education. (E.g., formula distributions, other distributions required by regulatory or statutory formulas.)
- Payments made by a state agency or institution of higher education to reimburse state employees for moving expenses.
- Disbursements for rental agreements on copiers where the payment is based on cost per copy.
- Disbursements for the purchase of insurance.
- Other disbursements as approved in writing by the State Controller.

Permissible Advanced Payments

Any advance payment made pursuant to the terms of a state contract requires the written approval of the state controller, or a delegate, authorized by the state controller, to approve advance payments, except in the following instances:

- Annual payments for maintenance of office equipment or for IT maintenance (software and hardware), IT service agreements (including internet access, systems and database access), software licenses;
- Federal grants awarded by the state to a subgrantee;
- Payments for entertainers, speakers, training, class tuition and fees, conference registrations or seminars;
- Payments included in inter-agency contracts;
- Payments for construction permits;
- Post office box rentals;
- Membership dues;
- Easements in perpetuity if the complete rights are transferred upon payment;
- Insurance premiums;
- Licenses;
- Subscriptions;
- Maintenance agreements;
- Payments to expert witnesses;
- Payments to a court appointed mediator;
- Advertising;
- The department controller can approve advance payments up to \$10,000 after determining that the advance payment provides a benefit to the state at least equal to the cost and risk of the payment.

Vendor Agreements

Chief fiscal officers or procurement directors may authorize individuals to execute vendor agreements up to \$5,000, when there is no requirement that a state contract be executed for the purchase of the goods or services and all of the following conditions apply.

- a. All terms and conditions in the vendor agreement have been reviewed by, authorized by, and the agreement signed by the agency's chief financial officer (or an authorized agency official, purchasing agent or State Controller contract signatory).
- b. All terms and conditions that put the state at risk of paying more than the agreed price for the goods or services have been deleted from the agreement, except that the agreement may specify reasonable cancellation provisions or other commercially reasonable terms defining liquidated damages, rights, or obligations because of breach of the agreement.
- c. All terms requiring that the state indemnify or hold harmless the vendor are deleted from the agreement.
- d. All terms and conditions in the agreement limiting the liability of the vendor are deleted from the agreement. State agencies and institutions of higher education may agree to commercially reasonable limitation of liability/remedies provisions, or exclusion of consequential damages, so long as in the case of transactions in goods involving tangible risk from the nature of the goods, and in the case of all services, limitations of liabilities or exclusion of consequential damages exclude from their provisions damages and claims arising out of bodily injury (including death) and damage to tangible property.

- e. All charges including taxes and incidentals are stated in the agreement.
- f. Provisions providing for other than “Colorado” choice of law and venue shall require prior approval by the Attorney General or designated reviewing Assistant or Special Assistant Attorney General.
- g. All amendments, changes, and deletions shall be in writing and approved by an authorized state official.
- h. The agreement is complete and contains all attachments and schedules, which may be relevant to the agreement.

Waived Contract Process

SCO keeps review of Phase I Process – not delegated to agencies

No longer waived contract if agency makes changes

From Fiscal Rule 3-1 to Policies:

DEFINITIONS:

Employee/Employer - A relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished, but also the details and means by which that result is accomplished. It is not necessary that the employer actually direct or control the manner in which the services are performed, it is sufficient that the employer has the right to do so. The right to discharge is also an important factor, indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and equipment, and a place to work to the individual who performs the services.

Independent Contractor – An independent contractor relationship exists when the firm or individual is responsible to the state for the results of certain work but is not subject to the state's control as to the means and methods of accomplishing those results. Further, an independent contractor generally:

- A. Has a place of business and a business listing in a directory when the services are offered to the public.
- B. Selects the clients and is free to work for one or more during any given period of time.
- C. Determines the time and place where work shall be performed.
- D. Provides the tools and materials needed to perform the work.
- E. Does not participate directly or indirectly in benefit programs of the state. For example, the individual is not covered by the state for Worker's Compensation covering injury to the worker, for public liability covering injury to others, or for unemployment compensation.
- F. May agree to perform specific services for a fixed price and generally does not receive regular amounts at stated intervals.

APPROVED STATE CONTROLLER FORMS

1. Waived Contracts – do we have a written policy? If not, need to develop one
2. Modification Tools – Update existing policies
3. Leases – anything more needed than fiscal rule?